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HAYNES *v.* COMMONWEALTH.

Dec. 14, 1905.

[52 S. E. 358.]

1. Bribery—Executive Officers—Policemen.—A police officer of a city is "an executive officer," within Code, § 3744, providing that, if any person give or offer any gift or gratuity to any executive officer with intent to influence his act, decision, or judgment on any matter or question which is or may be then pending or may be brought before him in his official capacity, shall, on conviction, be punished, etc.

[Ed. Note.—For cases in point, see vol. 8, Cent. Dig. Bribery, § 3.]

2. Criminal Law—Evidence—Other Offenses.—Where, at the time accused was prosecuted for bribing a police officer, a charge was pending against her for abducting G., a girl under 14 years of age, it was error to permit the state to prove by G. in the bribery case that she had been given whisky to drink and had had intercourse with a man at the house of accused the previous night.

3. Same—Prejudice.—Where accused may have been prejudiced by evidence erroneously admitted, it is sufficient to require a reversal of the judgment, though it be doubtful whether accused was in fact prejudiced.

[Ed. Note.—For cases in point, see vol. 15, Cent. Dig. Criminal Law, § 3094.]

JOHNSTON'S ADM'R *v.* MOORE LIME CO.

Nov. 23, 1905.

[52 S. E. 360.]

Master and Servant—Negligence—Contributory Negligence—Questions for Jury.—Evidence in an action for the death of an employee, in consequence of the explosion of the throttle valve of a steam engine operated by the employee, examined, and held, that the questions of the employer's negligence and the employee's contributory negligence were for the jury.

[Ed. Note.—For cases in point, see vol. 34, Cent. Dig. Master and Servant, §§ 1001, 1089.]

JERNIGAN *v.* COMMONWEALTH.

Dec. 7, 1905.

[52 S. E. 361.]

Fish—Criminal Trespass—Right of Appeal.—Code 1904, p. 1045, § 2071, declares any one who fishes in the waters on another's land guilty of a trespass, and provides that on conviction he shall be fined. Section 2073, p. 1046, provides that the offender shall be carried

before a justice, who shall try the case, and that, if judgment be rendered against the offender, it shall be for the forfeitures and costs, and if he does not satisfy the judgment the justice shall commit him to jail for one month, unless satisfaction be made. Section 2070b, cl. 8, p. 1044, provides that all penalties imposed or collected under the provisions of the chapter of which the above sections are a part shall be paid to the commonwealth. Section 3879, p. 2061, declares offenses which are not felonies to be misdemeanors. Held, that sections 2071 and 2073 create a criminal offense of the misdemeanor class and prescribe a criminal proceeding for their violation, and consequently an appeal from a judgment of conviction lies to the circuit court under Code 1904, pp. 2152, 2154, §§ 4106, 4107, providing for appeals to the circuit court from judgments of conviction in criminal cases before justices, although the fine imposed is less than \$10, so that no appeal would lie to the circuit court under section 2947, p. 1562, providing for appeals in civil cases.

ROWLAND et al. *v.* ROWLAND et al.

Dec. 7, 1905.

[52 S. E. 366.]

1. Appeal—Parties Entitled to Appeal.—A party has no right to appeal from a decree, the reversal of which would give him nothing more than that which he had received thereunder.

[Ed. Note.—For cases in point, see vol. 2, Cent. Dig. Appeal and Error, § 947.]

2. Wills—Suit to Establish—Issues.—Code 1887, § 2544 [Va. Code 1904, p. 1297], provides for the filing of a bill in equity to impeach or establish a will, on which bill a jury shall be ordered to ascertain whether any, and, if any, how much, of what was offered for probate, is the will of the decedent. Held, that where a bill stated a case which, if true, avoided the whole will, and the answer accepted the issue, an issue framed for a finding for or against the will in its entirety was not erroneous, on the theory that under the statute it should have been so phrased as to permit a finding sustaining a part of the instrument.

NORFOLK & W. RY. CO. *v.* COFFEY.

Dec. 7, 1905.

[52 S. E. 367.]

On petition for rehearing. Order reversing and remanding the cause set aside, and judgment of circuit court affirmed.

For former decision, see 51 S. E. 729.